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TERMINATED

**U.S. District Court
District of Oregon (Portland)
CIVIL DOCKET FOR CASE #: 3:08-cv-01073-PK**

Elkins v. Federal Aviation Administration
Assigned to: Magistrate Judge Paul Papak
Cause: 05:552 Freedom of Information Act

Date Filed: 09/16/2008
Date Terminated: 01/04/2010
Jury Demand: None
Nature of Suit: 895 Freedom of
Information Act
Jurisdiction: Federal Question

Plaintiff

David Joseph Elkins

represented by **David Joseph Elkins**
8629 White Swan Drive
Apt. 202
Tampa, FL 33614
(954) 552-7764
PRO SE

V.

Defendant

Scott Speer
ATCT PDX Airport
TERMINATED: 03/24/2009

represented by **Kevin C. Danielson**
US Attorney's Office
1000 S.W. Third Avenue
Suite 600
Portland, OR 97204
(503) 727-1000
Fax: (503) 727-1117
Email: kevin.c.danielson@usdoj.gov
LEAD ATTORNEY

Defendant

Jim Pfiser
ATCT PDX Airport
TERMINATED: 03/24/2009

represented by **Kevin C. Danielson**
(See above for address)
LEAD ATTORNEY

Defendant

James Zapreth
TRACON Technician
TERMINATED: 03/24/2009

represented by **Kevin C. Danielson**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Federal Aviation Administration

represented by **Kelly Alexandre Zusman**
United States Attorney's Office
1000 SW Third Avenue
Suite 600
Portland, OR 97204
(503) 727-1009
Fax: (503) 727-1117
Email: Kelly.zusman@usdoj.gov
TERMINATED: 10/21/2008
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Kevin C. Danielson
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
09/16/2008	<u>1</u>	Complaint. Filing Fee in amount of \$350 collected. Receipt No. 23027 issued. Summons issued as to Jim Pfiser, Federal Aviation Administration Legal Department, Scott Speer, and James Zapreth. Jury Trial Requested: Yes. Filed by David Joseph Elkins against Scott Speer, Jim Pfiser, James Zapreth, Federal Aviation Administration. (Attachments: #(1) Civil Cover Sheet; #(2) Issued Summons) (eo) (Entered: 09/16/2008)

09/16/2008	2	Discovery and Pretrial Scheduling Order and Notice of Case Assignment to the Honorable Paul Papak. Discovery is to be completed by 1/14/2009. Joint Alternate Dispute Resolution Report is due by 2/13/2009. Pretrial Order is due by 2/13/2009. Ordered by Judge Paul Papak. (eo) (Entered: 09/16/2008)
09/16/2008	3	Motion for Temporary Restraining Order - Titled "Motion for Temporary Injunction Directing James Zapreth, Scott Speer, Jim Pfiser of the FAA Not to Destroy Records Requested in FOIA # 2008-006830WS." Filed by David Joseph Elkins. (eo) (Entered: 09/16/2008)
09/19/2008	4	Scheduling Order by Ancer L. Haggerty regarding Motion for Temporary Restraining Order 3 . Order setting Oral Argument for 9/19/2008 at 10:30AM by TELEPHONE before Chief Judge Ancer L. Haggerty. (The Court will initiate the call) (jlr) (Entered: 09/19/2008)
09/19/2008	5	ORDER by Judge Ancer L. Haggerty Denying as Moot, plaintiff's Motion for a Temporary Restraining Order 3 . Counsel for the FAA confirmed that the TRACON tape for 8/7/08 has been preserved for purposes of this litigation and that a similar copy will be made of the other TRACON tape for 9/4/08. Order striking the motion hearing scheduled for 9/19/08 at 10:30. (jlr) (Entered: 09/19/2008)
10/07/2008	6	Summons Returned Unexecuted as to Scott Speer, Jim Pfiser, James Zapreth, Federal Aviation Administration. Summonses do not indicate what address was used to serve Defendants. Plaintiff should refer to FRCP 4(e)(1) for service on individual Defendants and FRCP 4(i) for service on the United States or its' Agencies. Filed by David Joseph Elkins. (eo) (Entered: 10/15/2008)
10/17/2008	7	Return of Service Executed as to Federal Aviation Administration served on 10/16/2008. Service specifically made upon Local US Attorney. Filed by David Joseph Elkins. (eo) (Entered: 10/21/2008)
10/21/2008	8	Notice of Attorney Substitution:Attorney Kevin Danielson is substituted as counsel of record in place of Attorney Kelly Alexandre Zusman.Filed by Federal Aviation Administration. (Danielson, Kevin) (Entered: 10/21/2008)
10/21/2008	9	Certificate of Service by Federal Aviation Administration of Attorney Substitution 8 Filed by Federal Aviation Administration. (Danielson, Kevin) (Entered: 10/21/2008)
10/21/2008	10	Affidavit in Support of Service of Summons Returned Unexecuted (# 6). Filed by David Joseph Elkins. (eo) (Entered: 10/22/2008)
12/23/2008	11	Notice of Change of Address.Filed by David Joseph Elkins. (eo) (Entered: 12/29/2008)

01/16/2009	<u>12</u>	Answer to Complaint. Filed by Scott Speer, Jim Pfiser, James Zapreth, Federal Aviation Administration. (Danielson, Kevin) (Entered: 01/16/2009)
01/16/2009	<u>13</u>	Unopposed Motion for Extension of Discovery & PTO Deadlines. Filed by Scott Speer, Jim Pfiser, James Zapreth, Federal Aviation Administration. (Danielson, Kevin) (Entered: 01/16/2009)
01/16/2009	14	CIVIL MINUTES: Record of Order by Judge Paul Papak: Granting Defendants' Unopposed Motion for Extension of Briefing Schedule <u>13</u> as follows: Discovery is to be completed by 4/16/2009. Dispositive Motions are due by 5/18/2009. Joint Alternate Dispute Resolution Report is due by 6/26/2009. Pretrial Order is due by 6/26/2009 or until 30 days after this Court's final ruling on dispositive motions, whichever date is later. (gm) (Entered: 01/16/2009)
01/23/2009	<u>15</u>	Motion for Rule 16 Conference. Filed by David Joseph Elkins. (eo) (Entered: 01/26/2009)
01/27/2009	16	CIVIL MINUTES: Record of Order by Judge Paul Papak: Granting Plaintiff's Motion for Pretrial Conference <u>15</u> . Order: Setting a Telephone Rule 16 Conference for 2/17/2009 at 2:30PM (PST) in Chambers. The Court will initiate the call to the parties. Local Rules 16.2(b) and 26.1(a)(b) require that parties and/or their counsel confer prior to the conference. At the conference, counsel should be prepared to discuss the status of the case, relevant dates and deadlines, and any other significant issues. If consents are going to be filed, it is helpful if they are filed prior to the time of the conference, particularly if a firm trial date is desired. (gm) (Entered: 01/27/2009)
02/17/2009	18	CIVIL MINUTES: Record of Proceedings before Judge Paul Papak: Telephonic Rule 16 Conference held 2/17/09. No changes are made to the current case schedule. David Elkins (pro se) present as counsel for plaintiff(s). Kevin Danielson present as counsel for defendant(s). Court Reporter: (None). (gm) (Entered: 02/18/2009)
02/26/2009	<u>19</u>	Notice of Change of Address.Filed by David Joseph Elkins. (eo) (Entered: 03/03/2009)
02/26/2009	<u>20</u>	Motion to Dismiss Defendants Scott Speer, Jim Pfiser, and James Zapreth. Filed by David Joseph Elkins. (eo) (Entered: 03/03/2009)
02/27/2009	<u>21</u>	Motion for Leave to File Amended Complaint/Petition. Filed by David Joseph Elkins. (Attachments: # <u>1</u> Proposed Amendments, # <u>2</u> Proposed Amended Complaint) (eo) (Entered: 03/03/2009)
03/02/2009	<u>22</u>	Mail Returned - Undeliverable: Minuted of Proceedings (# 18) sent to David Joseph Elkins at PO Box 17682, Plantation, FL, 33318, returned as undeliverable. (eo) (Entered: 03/03/2009)

03/02/2009	23	Mail Returned - Undeliverable: Minutes of Proceedings (# 18) sent to David Joseph Elkins at 3910 Central Ave - Apt 303, Ft Myers, FL, 33901 returned as undeliverable. (eo) (Entered: 03/03/2009)
03/04/2009	24	CIVIL MINUTES: Record of Order by Judge Paul Papak: Setting Plaintiff's Motion to Dismiss Defendants Scott Speer, Jim Pfiser, and James Zapreth (Only) 20 and Plaintiff's Motion to Amend Complaint 21 on the under advisement calendar of 3/30/2009. (gm) (Entered: 03/04/2009)
03/13/2009	25	Motion for Hearing Concerning Letter Referring to the Destruction of Records Requested. Filed by David Joseph Elkins. (eo) (Entered: 03/17/2009)
03/19/2009	26	CIVIL MINUTES: Record of Order by Judge Paul Papak: Setting a Telephone Conference for 3/24/2009 at 11:00AM (PDT) in Chambers. The Court will initiate the call to the parties. (gm) (Entered: 03/19/2009)
03/19/2009	27	Letter to presiding Judge Paul Papak from David Joseph Elkins. Filed by David Joseph Elkins. (eo) (Entered: 03/23/2009)
03/24/2009	28	CIVIL MINUTES: Record of Proceedings before Judge Paul Papak: Telephone Conference held 3/24/09. Order: Plaintiff's Motion to Dismiss Defendants Scott Speer, Jim Pfiser, and James Zapreth 20 is Granted. The case caption is changed to <u>Elkins v. Federal Aviation Administration</u> and will be reflected on any future filings. Order: Resetting Plaintiff's Motion to Amend Complaint 21 from 3/30/2009 to the under advisement calendar of 5/11/2009. Defendant's response to motion to amend due by 4/24/2009. Plaintiff's reply to Defendant's response due by 5/8/2009. David Elkins (pro se) present as counsel for plaintiff(s). Kevin Danielson; Dwight Williams present as counsel for defendant(s). Court Reporter: (None). (gm) (Entered: 03/24/2009)
04/03/2009	29	Amended Motion for Leave to File Amended Complaint/Petition - titled "Amended Motion Plaintiff's Response to Defendant's Objection to Plaintiff Filing an Amended Supplemental Complaint Pursuant to FRCP 15(a)(d)". Filed by David Joseph Elkins. (eo) (Entered: 04/06/2009)
04/03/2009	30	Affidavit of David Joseph Elkins in Support of Motion to File an Amended Supplemental Complaint (# 29). Filed by David Joseph Elkins. (eo) (Entered: 04/06/2009)
04/03/2009	31	Proposed Form of Order Submitted. Filed by David Joseph Elkins. (eo) (Entered: 04/06/2009)
04/03/2009	32	Offer of Proof That The FAA Has Created, Extracted and Searched for Records Repeatedly from 2005-2008. Filed by David Joseph Elkins. (eo) (Entered: 04/06/2009)

04/24/2009	33	Response in Opposition <i>Defendant's Response to Plaintiff's Motion to Amend Complaint</i> to Motion for Leave to File Amended Complaint/Petition 29 . Filed by Federal Aviation Administration. (Danielson, Kevin) (Entered: 04/24/2009)
05/14/2009	34	Motion for Summary Judgment. Oral argument requested. Filed by David Joseph Elkins. (eo) (Entered: 05/15/2009)
05/14/2009	35	Memorandum in Support of Plaintiff's Motion for Summary Judgment (# 34). Filed by David Joseph Elkins. (eo) (Entered: 05/15/2009)
05/14/2009	36	Affidavit of David Joseph Elkins in Support of Motion for Summary Judgment (# 34). Filed by David Joseph Elkins. (eo) (Entered: 05/15/2009)
05/14/2009	37	Proposed Form of Order Submitted. Filed by David Joseph Elkins. (eo) (Entered: 05/15/2009)
05/15/2009	38	Motion for Extension of Time. Filed by Federal Aviation Administration. (Danielson, Kevin) (Entered: 05/15/2009)
05/19/2009	39	CIVIL MINUTES: Record of Order by Judge Paul Papak: Granting Defendant's Motion for Extension of Time 38 as follows: Dispositive motions will be due 14 days following this Court's final ruling on Plaintiff's Motion to Amend Complaint. (gm) (Entered: 05/19/2009)
05/20/2009	40	CIVIL MINUTES: Record of Order by Judge Paul Papak: Plaintiff's Motion for Summary Judgment 34 is Stayed pending the Court's final ruling on Plaintiff's Motion to Amend Complaint 21 . Upon final ruling, the Court will set Plaintiff's motion on its under advisement calendar and indicate the appropriate briefing schedule. (gm) (Entered: 05/20/2009)
06/12/2009	41	Offer of Additional Proof Conferred with Opposing Counsel.Filed by David Joseph Elkins. (kt) (Entered: 06/15/2009)
06/19/2009	42	Opinion & Order: Granting Plaintiff's Motion to Amend 21 . Elkins has twenty-one days to amend his complaint to comply with the court's instructions. Elkins' amended complaint is due by 7/10/2009. Defendant's answer is due by 7/24/2009. Dispositive motions are due by 8/24/2009. Defendant's response to Plaintiff's Motion for Summary Judgment 34 is due by 9/8/2009. Plaintiff's reply is due by 9/22/2009 and Plaintiff's Motion for Summary Judgment 34 will placed on the under advisement calendar as of 9/22/2009. Signed 6/19/09 by Judge Paul Papak. (gm) (Entered: 06/19/2009)

06/29/2009	43	CIVIL MINUTES: Record of Order by Judge Paul Papak: The Court construed Plaintiff's Amended Motion for Leave to Amend Complaint 29 as a memorandum in support of the original Motion to Amend Complaint, which has since been granted by Opinion & Order 42 . Plaintiff's Amended Motion for Leave to Amend Complaint 29 is therefore Moot. (gm) (Entered: 06/30/2009)
07/08/2009	44	Notice of Change of Address.Filed by David Joseph Elkins. (eo) (Entered: 07/09/2009)
07/08/2009	45	Motion for Extension of Time to File Amended Complaint. Filed by David Joseph Elkins. (eo) (Entered: 07/09/2009)
07/09/2009	46	CIVIL MINUTES: Record of Order by Judge Paul Papak: Granting Plaintiff's Motion for Extension of Time 45 as follows: Amended Complaint due by 7/17/2009. Defendant's answer due by 7/31/2009. Dispositive motions due by 8/31/2009. Defendant's response to summary judgment motion due by 9/15/2009. Plaintiff's reply to response to summary judgment motion due by 9/29/2009. Order: Resetting Plaintiff's Motion for Summary Judgment 34 from 9/22/2009 to the under advisement calendar of 9/30/2009. (gm) (Entered: 07/09/2009)
07/16/2009	47	Proposed Amendments for Second Amended Complaint.Filed by David Joseph Elkins. (eo) (Entered: 07/17/2009)
07/16/2009	48	Second Amended Complaint.Filed by David Joseph Elkins against Federal Aviation Administration. (eo) (Entered: 07/17/2009)
07/31/2009	49	Answer to Amended Complaint. Filed by Federal Aviation Administration. (Danielson, Kevin) (Entered: 07/31/2009)
08/31/2009	50	Unopposed Motion for Extension of Time. Filed by Federal Aviation Administration. (Danielson, Kevin) (Entered: 08/31/2009)
08/31/2009	51	CIVIL MINUTES: Record of Order by Judge Paul Papak: Granting Defendant's Unopposed Motion for Extension of Time 50 as follows: Dispositive Motions are due by 9/4/2009. Responses to Dispositive Motions are due by 9/18/2009. Replies to Dispositive Motions are due by 10/2/2009. Order: Resetting Plaintiff's Motion for Summary Judgment 34 from 9/30/2009 to the under advisement calendar of 10/5/2009. (gm) (Entered: 08/31/2009)
09/03/2009	52	Unopposed Motion for Extension of Time. Filed by Federal Aviation Administration. (Danielson, Kevin) (Entered: 09/03/2009)

09/08/2009	53	CIVIL MINUTES: Record of Order by Judge Paul Papak: Granting Defendant's <i>Second</i> Unopposed Motion for Extension of Time 52 as follows: Dispositive Motions due by 9/11/2009. Defendant's Response to summary judgment motion due by 9/25/2009. Plaintiff's reply to response to summary judgment motion due by 10/9/2009. Order: Resetting Plaintiff's Motion for Summary Judgment 34 from 10/5/2009 to the under advisement calendar of 10/13/2009. (gm) (Entered: 09/09/2009)
09/11/2009	54	Motion for Extension of Time <i>Defendant's Unopposed Motion for a One-Day Extension of Time</i> . Filed by Federal Aviation Administration. (Danielson, Kevin) (Entered: 09/11/2009)
09/14/2009	55	CIVIL MINUTES: Record of Order by Judge Paul Papak: Granting Defendant's <i>Third</i> Unopposed Motion for Extension of Time 54 as follows: Dispositive Motions due by 9/14/2009. Defendant's response to summary judgment motion due by 9/28/2009. Plaintiff's reply to response to summary judgment motion due by 10/13/2009. Order: Resetting Plaintiff's Motion for Summary Judgment 34 from 10/12/2009 to the under advisement calendar of 10/14/2009. (gm) (Entered: 09/14/2009)
09/14/2009	56	Motion for Summary Judgment. Filed by Federal Aviation Administration. (Danielson, Kevin) (Entered: 09/14/2009)
09/14/2009	57	Memorandum in Support <i>Defendant's Memorandum of Law In Support of Motion for Summary Judgment</i> . Filed by Federal Aviation Administration. (Related document(s): Motion for Summary Judgment 56 .) (Danielson, Kevin) (Entered: 09/14/2009)
09/14/2009	58	Declaration of Jene S. Zullo. Filed by Federal Aviation Administration. (Related document(s): Motion for Summary Judgment 56 .) (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3) (Danielson, Kevin) (Entered: 09/14/2009)
09/14/2009	59	Declaration of Sheila A. Walters. Filed by Federal Aviation Administration. (Related document(s): Motion for Summary Judgment 56 .) (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9, # 10 Exhibit 10, # 11 Exhibit 11, # 12 Exhibit 12, # 13 Exhibit 13, # 14 Exhibit 14, # 15 Exhibit 15) (Danielson, Kevin) (Entered: 09/14/2009)
09/14/2009	60	CIVIL MINUTES: Record of Order by Judge Paul Papak: Setting Defendant's Motion for Summary Judgment 56 on the under advisement calendar of 10/14/2009 (at the time set for consideration of Plaintiff's summary judgment motion). (gm) (Entered: 09/14/2009)
09/23/2009	61	Response to Motion for Summary Judgment (# 56). Filed by David Joseph Elkins. (eo) (Entered: 09/25/2009)

09/23/2009	62	Motion for In-Camera Review of Withheld Records and Redactions for Compliance with Exemptions 2, 3, and 7e. Filed by David Joseph Elkins. (eo) (Entered: 09/25/2009)
09/24/2009	63	CIVIL MINUTES: Record of Order by Judge Paul Papak: Setting Plaintiff's Motion for In Camera Review 62 on the under advisement calendar of 10/14/2009 (at the time set for consideration of the pending summary judgment motions). (gm) (Entered: 09/28/2009)
09/28/2009	64	Response to Motion for Summary Judgment 34 . Filed by Federal Aviation Administration. (Danielson, Kevin) (Entered: 09/28/2009)
10/05/2009	65	Response <i>Defendant's Response to Plaintiff's Motion For In Camera Review</i> to Motion for Order 62 . Filed by Federal Aviation Administration. (Danielson, Kevin) (Entered: 10/05/2009)
11/16/2009	68	Notice - Titled "Plaintiff Would Like to Bring to the Attention of the Court."Filed by David Joseph Elkins (eo) (Entered: 11/19/2009)
11/18/2009	66	Findings & Recommendation: Plaintiff's Motion for Summary Judgment 34 should be denied. Plaintiff's Motion for In Camera Review 62 should be denied as moot. Defendant's Motion for Summary Judgment 56 should be granted and judgment should be entered accordingly. Objections to the Findings and Recommendation are due by 12/3/2009. Signed on 11/18/09 by Magistrate Judge Paul Papak. (gm) (Entered: 11/18/2009)
11/18/2009	67	CIVIL MINUTES: Record of Order by Judge Paul Papak: Findings & Recommendation 66 is referred to Judge Garr M. King for review. Objections, if any, are due 12/3/2009. If no objections are filed, then the Findings and Recommendation will go under advisement on that date. If objections are filed, then a response is due within 10 days after being served with a copy of the objections. When the response is due or filed, whichever date is earlier, the Findings and Recommendation will go under advisement. (gm) (Entered: 11/18/2009)
12/03/2009	69	Plaintiff's Objections to Findings & Recommendation 66 signed on 11/18/09 by Magistrate Judge Paul Papak. Filed by David Joseph Elkins. (mr) (Entered: 12/08/2009)
12/14/2009	70	Brief <i>Defendant's Response to Plaintiff's Objections to the Findings & Recommendation of the Magistrate</i> . Filed by Federal Aviation Administration. (Related document(s): Objections to Findings & Recommendation 69 .) (Danielson, Kevin) (Entered: 12/14/2009)
01/04/2010	71	ORDER: ADOPTING the Findings and Recommendation of Magistrate Judge Papak dated November 18, 2009 66 in its entirety. IT IS HEREBY ORDERED that Plaintiff's Motion for Summary Judgment 34 is denied. Plaintiff's Motion for In

		Camera Review 62 is moot. Defendant's Motion for Summary Judgment 56 is granted. Signed on 1/4/10 by Judge Garr M. King. (mr) (Entered: 01/04/2010)
01/04/2010	72	JUDGMENT: IT IS ORDERED AND ADJUDGED that this action is dismissed with prejudice. Signed on 1/4/10 by Judge Garr M. King. (mr) (Entered: 01/04/2010)

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